IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1141 OF 2005

Smt.Sushila Narayan Chalke and Ors. ..Appellants
Versus
Nagraj Pukharaj Sheth ..Respondent

Mr.R.V.More with S.B.Shetye for appellants
Mr.Narendra Walawalkar with G.H.Keluskar for respondent

CORAM : P.V.KAKADE, J.

DATE : 18th OCTOBER, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Raigad dated 31st March 2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Senior Division, Panvel dated 11th September, 1999 decreeing the plaintiff’s suit for specific performance of the contract between the parties.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for specific performance of the contract dated 29.11.1988 between the parties. The suit was initially contested and the defendant denied the allegations made by the plaintiff.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that on the basis of available evidence the plaintiff was entitled to specific performance of the agreement dated 29.11.1988 and as such decreed the suit. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties dismissed the appeal. In doing so, it was observed by the appellate court vide para 19 that pending the appeal it was pointed out that the matter was amicably settled between the parties and in fact the amount of Rs.1,39,111/= i.e. the decretal amount, which was deposited by the Plaintiff in the lower court, was withdrawn by the present appellants and as such there could not be any dispute on such statement. The learned counsel for the respondent also brought to my notice a copy of the application made by the present appellants in the trial court seeking withdrawal of the said amount, which was granted on the basis of No Objection given by the plaintiff-respondent.

Under the circumstances there cannot be doubt that the matter is amicably settled between the parties out of Court pending the appeal.

4. The learned counsel for the appellant strenuously and vehemently urged that the decree passed by the lower court and confirmed by the appellate court was not based on the factual and legal aspects involved in the evidence. However, it is apparent that the evidence on record was sufficient to pass the decree and therefore, it would brook no interference. On the merits also the reasoning adopted and findings recorded by the learned lower appellate court appears to be legal and proper and therefore, it would brook no interference. In the result the appeal stands dismissed with no order as to costs.